

HIGHLY CONFIDENTIAL - A. KIRK
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.
-----X

* * * HIGHLY CONFIDENTIAL * * *

DEPOSITION OF ALEX KIRK

New York, New York

August 31, 2009

Reported by:

KATHY S. KLEPPER, RMR, RPR, CRR, CLR

JOB NO. 24545

1 HIGHLY CONFIDENTIAL - A. KIRK

2 August 31, 2009

3 9:30 a.m.

4
5 HIGHLY CONFIDENTIAL deposition
6 of ALEX KIRK, held at Jones Day, LLP,
7 222 East 41st Street, LLP, New York,
8 New York, before Kathy S. Klepfer, a
9 Registered Professional Reporter,
10 Registered Merit Reporter, Certified
11 Realtime Reporter, Certified Livenote
12 Reporter, and Notary Public of the State
13 of New York.
14
15
16
17
18
19
20
21
22
23
24
25

1

HIGHLY CONFIDENTIAL - A. KIRK

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

HIGHLY CONFIDENTIAL - A. KIRK

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. Yes. Several of my colleagues were --

1 HIGHLY CONFIDENTIAL - A. KIRK

2 who had signed employment agreements were
3 resigning from the firm [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] He was on point for those
11 sorts of issues with Barclays.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

HIGHLY CONFIDENTIAL - A. KIRK

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HIGHLY CONFIDENTIAL - A. KIRK

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. During the period from Friday, the
7 12th, through Sunday, the 14th, were you dealing
8 with any particular people at Barclays who you
9 could name?

10 A. Archibald Cox. Bob Diamond. Rich
11 Ricci. Michael Klein, as their agent.

12 [REDACTED]?

13 [REDACTED] recall.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 HIGHLY CONFIDENTIAL - A. KIRK

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. Now, you referred to -- you said they
17 broadly outlined the first transaction. By the
18 Friday morning, is it your understanding there's
19 a second transaction, a subsequent transaction?

20 A. By the time we had this meeting --

21 Q. Uh-huh.

22 A. -- it was my view, my opinion, that
23 there would have to be a reworking of the
24 transaction because a vast majority of those
25 securities that had been planned for transfer

1 HIGHLY CONFIDENTIAL - A. KIRK

2 were held at JPMorgan. There was a -- and
3 JPMorgan had a dispute of some sort about the
4 transfer of the repo with Barclays, which was
5 described to me by Mike Keegan, and in addition
6 to that, they shut down Lehman's -- they closed
7 down Lehman's DTC account, which led me to
8 believe that JPMorgan would not cooperate and
9 transfer the aforementioned securities to
10 Barclays on that Friday.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 HIGHLY CONFIDENTIAL - A. KIRK

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. Describe that for me. What was your
6 understanding?

7 A. So, to be clear, I'm not an expert,
8 was not an expert on repo, so I was learning
9 things for the first time that day that I didn't
10 understand how they actually worked prior to
11 that. So I got what was a cursory as opposed to
12 a detailed explanation of the issue, but as I
13 understood it from the way that Mike Keegan
14 explained it to me was that the Fed had been
15 providing a repo for Lehman Brothers earlier in
16 the week of approximately \$50 billion, that the
17 Fed had made it known that they wanted to be
18 repaid on that repo, and that Barclays had
19 agreed to assume that repo obligation from the
20 Fed. Without that financing the firm would have
21 collapsed the next morning.

22 So the way it was explained to me was,
23 during the transfer of those -- that loan and
24 the collateral associated with that loan, there
25 were many pieces of collateral that Barclays

1 HIGHLY CONFIDENTIAL - A. KIRK

2 could not value, so they did not accept them in
3 transfer from the Fed. And mechanically, it was
4 explained to me the way that worked was, in a
5 tri-party repo, the Fed transferred all of the
6 positions to JPMorgan and then JPMorgan began
7 transferring those positions upon the receipt of
8 money from Barclays transferred money, and then
9 they would transfer the positions that secured
10 that repo.

11 And at some point during that process,
12 Barclays became very uncertain as to some
13 percentage of that collateral, I don't recall
14 the exact amount, but it was a large number,
15 maybe as much as, you know, 20 percent of the
16 collateral, and when Barclays didn't accept
17 those positions, they, by definition, just got
18 left at JPMorgan.

19 They -- so JPMorgan was left with
20 collateral that they were not comfortable with
21 but Barclays would not accept, so -- and
22 JPMorgan, I guess they attempted to negotiate
23 but couldn't get that negotiation done.

24 [REDACTED]

25 [REDACTED]

1

HIGHLY CONFIDENTIAL - A. KIRK

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. And how did Klein, Ricci and Keegan or
any combination of those three men react to that
news?

1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. There was some question as to, well,
3 what do we do now? I suggested that the only
4 reasonable course of action would be to proceed
5 with the transaction substituting the repo
6 assets, the assets that Barclays had lent
7 against, for all the other securities that had
8 been contemplated in the transaction and leave
9 the rest of the transaction as was.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

HIGHLY CONFIDENTIAL - A. KIRK

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

turn it over, or was it to find some, some

identifiable bucket of value until Barclays

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 HIGHLY CONFIDENTIAL - A. KIRK

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Martin -- somebody who worked for Martin Kelly
18 had prepared it.

19 Q. And within the balance sheet, sir, the
20 fifth column that's entitled Transaction
21 Adjustments, do you see that?

22 A. Yes.

23 Q. Do you know what that column
24 represents, what the entries in that column are

25 [REDACTED]